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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RES-NV KOBIE CREEK, LLC, a
Florida limited liability
company,

Plaintiff,

vs.

LARRY L. SAYERS, an individual;
KOBIE CREEK, LLC, a Nevada limited
liability company; SADIE ESTATES,
LLC, a Nevada limited liability
company;

Defendants.

2:11-cv-00347-ECR-CWH

Order

Plaintiff RES-NV Kobie Creek, LLC brought a deficiency action against Defendants. Now pending is Plaintiff's Motion for Default Judgment (#23) against Defendants Kobie Creek, LLC ("Kobie Creek") and Sadie Estates, LLC ("Sadie Estates"). The motion is ripe and we now rule on it.

I. Background

On March 4, 2011, Plaintiff filed the Complaint/Application for Deficiency Judgment (#1). The Complaint alleges that Plaintiff is entitled to a judgment of approximately \$5,412,092,30 against Defendant Kobie Creek and Defendant Larry L. Sayers ("Sayers"), who personally guaranteed Kobie Creek's obligations under a loan executed

1 on May 9, 2006 in the original principle amount of \$4,038,000. (Id.
2 ¶¶ 8, 11, 33-34.) The Complaint further alleges that Plaintiff is
3 entitled to a judgment of approximately \$4,767,356.40 against
4 Defendant Sadie Estates and Sayers, who personally guaranteed Sadie
5 Estates' obligations under a loan executed on April 20, 2007 in the
6 original principal amount of \$3,958,118. (Id. ¶¶ 17, 20, 38-39).

7 On September 14, 2011, the Clerk entered default (#20) as to
8 Defendants Kobie Creek and Sadie Estates. On December 22, 2011,
9 Plaintiff filed a Motion for Default Judgment (#23) against Defendants
10 Kobie Creek and Sadie Estates. There was no response.

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II. Discussion

13 Prior to ruling on Plaintiff's Motion for Default Judgment (#23),
14 the Court must first affirmatively determine its subject matter
15 jurisdiction over this action. Federal courts are courts of limited
16 jurisdiction. Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 374
17 (1978). "A federal court is presumed to lack jurisdiction in a
18 particular case unless the contrary affirmatively appears." Stock W.,
19 Inc. v. Confederated Tribes of the Colville Reservation, 873 F.2d
20 1221, 1225 (9th Cir. 1989). A district court may therefore *sua sponte*
21 raise the issue of subject matter jurisdiction and must dismiss a case
22 if no subject matter jurisdiction exists. FED. R. Civ. P. 12(h)(3) ("If
23 the court determines at any time that it lacks subject-matter
24 jurisdiction, the court must dismiss the action.").

25 Plaintiff's Complaint (#1) alleges that the court has diversity
26 jurisdiction pursuant to 28 U.S.C. § 1332(a). To establish subject

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1 matter jurisdiction based on diversity of citizenship, the party
2 asserting jurisdiction must show complete diversity of citizenship
3 among opposing parties and that the amount in controversy exceeds
4 \$75,000. 28 U.S.C. § 1332(a). The citizenship of a limited liability
5 company is determined by the citizenship of each of its
6 owners/members. Johnson v. Columbia Props. Anchorage, LP, 437 F.3d
7 894, 902 (9th Cir. 2006). Therefore, the Court must determine the
8 citizenship of Plaintiff's member entities in order to determine the
9 citizenship of Plaintiff.

10 Plaintiff RES-NV Kobie Creek, LLC is a Florida limited liability
11 company which is wholly owned by its sole member Multibank 2009-1 RED-
12 ADC Venture, LLC ("Multibank"). (Compl. ¶ 1 (#1).) Multibank is a
13 Delaware limited liability company comprised of two members, RL RES
14 2009-1 Investments, LLC and the Federal Deposit Insurance Corporation
15 ("FDIC"). (Id. ¶ 2.) RL RES 2009-1 Investments, LLC is a citizen of
16 Delaware and Florida. (Id.) We therefore turn to the FDIC.

17 Prevailing Ninth Circuit case law holds that a federal
18 corporation such as the FDIC "is not a citizen of any particular state
19 for diversity purposes." Hancock Fin. Corp. v. Fed. Sav. & Loan Ins.
20 Co., 492 F.2d 1325, 1329 (9th Cir. 1974). Plaintiff urges this Court
21 to ignore the holding in Hancock, arguing that the decision was partly
22 based on federal statutes evidencing a Congressional intent to limit
23 federal jurisdiction over federal corporations, and which intent has
24 since reversed itself with the enactment of the Financial Institutions
25 Reform, Recovery and Enforcement Act of 1989 ("FIRREA") which provides
26 for federal question jurisdiction over civil actions where the FDIC is

1 a party. See Kirkbridge v. Cont'l Cas. Co., 933 F.2d 729, 731-32 (9th
2 Cir. 1991). However, Hancock is still binding authority upon this
3 Court, and we cannot ignore its holding because one of its bases has
4 since been amended. The citizenship of Plaintiff's members is
5 therefore Delaware, Florida, and "no particular State."

6 Pursuant to § 1332(a), this Court has jurisdiction over suits
7 between citizens of different states and, conversely, lacks original
8 jurisdiction over civil actions that are not between citizens of
9 different states. "A suit in which one of the parties is a citizen of
10 no particular State, is, by definition, a suit that is not between
11 citizens of different states." CML-NV Cauldron, LLC v. Rapaport, Nos.
12 2:10-cv-00695-LDG (PAL), 2:11-cv-00289-LDG (RJJ), 2012 WL 553094, at
13 *1 (D.Nev. Feb. 17, 2012) (citing Swiger v. Allegheny Energy, Inc.,
14 540 F.3d 179, 184 (3d Cir. 2008); ISI Int'l, Inc. v. Borden Ladner
15 Gervais LLP, 316 F.3d 731, 733 (7th Cir. 2003)) (emphasis in
16 original). Thus, the Court may not exercise diversity jurisdiction
17 over the FDIC, and may not exercise diversity jurisdiction over
18 limited liability companies of which the FDIC is a member, as many
19 courts in this district have recently held. See, e.g., CML-NV
20 Cauldron, LLC, 2012 WL 553094, at *1; CML-NV Two, LLC v. DGRE, LLC,
21 No. 2:11-cv-00318-RLH-GWF, 2012 WL 234440, at *1 (D.Nev. Jan. 24,
22 2012); RES-NV APC, LLC v. Astoria Pearl Creek, LLC, No. 2:11-cv-00381-
23 LDG(RJJ), at *2 (D.Nev. Nov. 4, 2011). The case must therefore be
24 dismissed.

1 III. Conclusion

2 Prevailing Ninth Circuit case law holds that the citizenship of
3 a limited liability company is determined by the citizenship of its
4 members and that federal corporations are not citizens of any state
5 for diversity purposes. Accordingly, the Court may not exercise
6 jurisdiction over Plaintiff, a limited liability company of which the
7 FDIC is a member.

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9 IT IS, THEREFORE, HEREBY ORDERED that the action is DISMISSED
10 with prejudice.

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12 The Clerk shall enter judgment accordingly.

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14 DATED: June 22, 2012.

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16 UNITED STATES DISTRICT JUDGE